

FILED WITH LRC TIME: <u>4pm</u> MAY 06 2011 <i>Emily B. Caudill</i> REGULATIONS COMPILER
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STATEMENT OF EMERGENCY

900 KAR 5:020E

(1) This emergency administrative regulation is being promulgated to implement changes to the State Health Plan to modify Certificate of Need criteria for applications for special care neonatal beds. Changes to the review criteria will allow an existing facility with an occupancy rate for special care Level II neonatal beds greater than seventy (70) percent to add up to four (4) additional acute care beds as special care Level II neonatal beds. This change will allow facilities with higher occupancy rates to add beds so that newborns will not be required to transfer to other hospitals due to insufficient capacity. This will allow mothers and newborns to remain in the same hospital, guarantees the health safety and welfare of the newborn, and provides continuity of care.

(2) Failure to enact this administrative regulation on an emergency basis will compromise the health and welfare of newborns that require services in Level II neonatal beds in acute care hospitals that experience 100% occupancy. As critical neonatal health needs are uncontrollable and unpredictable, the implementation of an emergency administrative regulation to protect the newborn's health is self-evident.

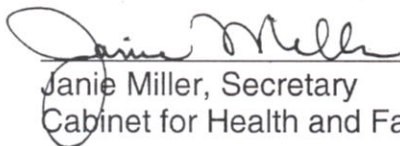
(3) This emergency administrative regulation shall be replaced by an ordinary administrative regulation to be concurrently filed with the Regulations Compiler.

(4) The ordinary administrative regulation is identical to this emergency administrative regulation.



Steve Beshear
Governor

Date



Janie Miller, Secretary
Cabinet for Health and Family Services

5/6/11
Date

1 Cabinet for Health and Family Services

2 Office of Health Policy

3 (Emergency Amendment)

4 900 KAR 5:020E. State Health Plan for facilities and services.

5 RELATES TO: KRS 216B.010-216B.130

6 STATUTORY AUTHORITY: KRS 194A.030, 194A.050(1), 216B.010, 216B.015(27),
7 216B.040(2)(a)2a

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.040(2)(a)2.a requires
9 the cabinet to promulgate an administrative regulation, updated annually, to establish
10 the State Health Plan. The State Health Plan is a critical element of the certificate of
11 need process for which the cabinet is given responsibility in KRS Chapter 216B. This
12 administrative regulation establishes the State Health Plan for facilities and services.

13 Section 1. The 2011 Update to the 2010-2012 State Health Plan shall be used to:

14 (1) Review a certificate of need application pursuant to KRS 216B.040; and

15 (2) Determine whether a substantial change to a health service has occurred
16 pursuant to KRS 216B.015(28)(a) and 216B.061(1)(d).

17 Section 2. Incorporation by Reference. (1) The "2011 Update to the 2010-2012
18 State Health Plan", May [~~March~~] 2011 is incorporated by reference.

19 (2) This material may be inspected, copied, or obtained, subject to applicable
20 copyright law, at the Office of Health Policy, 275 East Main Street, fourth floor,
21 Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

900 KAR 5:020E

REVIEWED:



Eric Friedlander, Deputy Secretary
Cabinet for Health and Family Services

5/6/11
Date

APPROVED:



Janie Miller, Secretary
Cabinet for Health and Family Services

5/6/11
Date

REGULATORY IMPACT ANALYSIS AND TEIRING STATEMENT

Administrative Regulation Number: 900 KAR 5:020E
Contact Person: Eric Friedlander, (502) 564-7042

1. Provide a brief summary of:
 - (a) What this administrative regulation does: This administrative regulation incorporates by reference the State Health Plan, which is used to determine whether applications for certificates of need are consistent with plans as required by KRS 216B.040.
 - (b) The necessity of this administrative regulation: KRS 216B.015(27) requires that the State Health Plan be prepared. Changes to the State Health Plan are necessary to change Certificate of Need application review criteria for Special Care Neonatal Beds. This administrative regulation incorporates the 2011 Update to the 2010 - 2012 State Health Plan by reference to provide the needed review criteria. Changes to the review criteria will allow an existing facility with an occupancy rate for special care Level II neonatal beds greater than seventy (70) percent to add up to four (4) additional acute care beds as special care Level II neonatal beds. This change will allow facilities with higher occupancy rates to add beds so that newborns will not have to be transferred to other facilities due to lack of space. This will allow mothers and newborns to remain in the same facility and guarantee continuity of care for the newborn.
 - (c) How this administrative regulation conforms to the content of the authorizing statutes: The preparation of the State Health Plan is required by KRS 216B.
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The preparation of the State Health Plan is required by KRS 216B.
2. If this is an amendment to an existing administrative regulation, provide a brief summary of:
 - (a) How the amendment will change this existing administrative regulation: The amendment will update the 2010 - 2012 State Health Plan review criteria will allow an existing facility with an occupancy rate for special care Level II neonatal beds greater than seventy (70) percent to add up to four (4) additional acute care beds as special care Level II neonatal beds. This change will allow facilities with higher occupancy rates to add beds so that newborns will not have to be transferred to other facilities due to lack of

space. This will allow mothers and newborns to remain in the same facility and guarantee continuity of care for the newborn.

- (b) The necessity of the amendment to this administrative regulation: KRS 216B.015(27) requires that the State Health Plan be prepared triennially. Changes to the review criteria will allow an existing facility with an occupancy rate for special care Level II neonatal beds greater than seventy (70) percent to add up to four (4) additional acute care beds as special care Level II neonatal beds. This change will allow facilities with higher occupancy rates to add beds so that newborns will not have to be transferred to other facilities due to lack of space. This will allow mothers and newborns to remain in the same facility and guarantee continuity of care for the newborn.
- (c) How the amendment conforms to the content of the authorizing statutes: The amendment carries out the requirement of KRS 216B.015(27) which requires that the State Health Plan to provide Certificate of Need requirements.
- (d) How the amendment will assist in the effective administration of the statutes: This amendment will provide an updated State Health Plan for purposes of certificate of need review.

- 3. List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation will affect health care providers governed by the Certificate of Need law, citizens who use health care in Kentucky, health planners in the Certificate of Need Program, and local communities that plan for, use, or develop community health care facilities.
- 4. Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
 - (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: The modifications will apply to potential Certificate of Need applicants for special care neonatal beds. They will now be allowed to apply for additional acute care beds that will be used as special care Level II neonatal beds.
 - (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to entities to comply with this amendment.
 - (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This change will allow facilities with higher occupancy rates to add beds so that newborns will not have to be transferred to other facilities due to lack of space. This will

allow mothers and newborns to remain in the same facility and guarantee continuity of care for the newborn.

5. Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
 - (a) Initially: No cost
 - (b) On a continuing basis: No cost
6. What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: No funding is necessary since there is no cost to implementing this administrative regulation.
7. Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No increase in fees or funding is necessary.
8. State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish any fees and does not increase any fees either directly or indirectly.
9. TIERING: Is tiering applied? (Explain why or why not)
Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 900 KAR 5:020E Contact Person: Eric Friedlander

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)?

Yes X No

If yes, complete questions 2-4.

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This amendment may impact any government owned, controlled or proposed healthcare facilities or services.
3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 216B.015(27) requires that the State Health Plan be prepared. This administrative regulation incorporates the 2011 Update to the 2010 – 2012 State Health Plan by reference.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. None.
- (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No impact to revenues.
 - (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No revenues will be generated to state or local government.
 - (c) How much will it cost to administer this program for the first year? None.
 - (d) How much will it cost to administer this program for subsequent years? None.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): None
Expenditures (+/-): None
Other Explanation: None

**COMMONWEALTH OF KENTUCKY
CABINET FOR HEALTH AND FAMILY SERVICES
Office of Health Policy**

900 KAR 5:020E, State Health Plan for Facilities and Services

Summary of Material Incorporated by Reference

The 2011 Update to the 2010 – 2012 State Health Plan, revised May 2011 is being incorporated by reference. The 2011 Update to the 2010 – 2012 State Health Plan shall be used to determine whether applications for certificates of need are consistent with plans as required by KRS 216B.040(2)(a)2.a. The 2011 Update to the 2010 – 2012 State Health Plan includes revisions to the following:

- a. The introductory page was changed to reflect the change in dates within the title from the 2011 Update to the 2010 – 2012 State Health Plan (March, 2011) to 2011 Update to the 2010 – 2012 State Health Plan (May, 2011) and revision date of May, 2011.
- b. Page 9, the following language was added as a new number 7 - Notwithstanding the above criteria, if the most recently published inventory and utilization data indicates that the occupancy of existing special care Level II neonatal beds was seventy (70) percent or greater, an application to designate up to four (4) additional acute care beds as special care Level II neonatal beds shall be consistent with this plan.
- c. The total number of pages incorporated by reference in the administrative regulation is fifty-seven (57).